

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Century-TCI California, L.P.	)	
	)	
Adelphia Cablevision of San Bernardino, LLC	)	
	)	CSR 5888-E
	)	
Petition for Determination of Effective	)	
Competition in Various California Communities	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 14, 2003**

**Released: April 16, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Century-TCI California, L.P. and Adelphia Cablevision of San Bernardino, LLC d/b/a Adelphia Cable Communications (“Adelphia”) has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission’s rules for a determination of effective competition in ten California communities (the “Communities”).<sup>1</sup> Adelphia alleges that its cable systems serving the Communities are subject to effective competition and therefore exempt from cable rate regulation because of competing services provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and DISH Network (“DISH”). The Cities of Calimesa, Yucaipa, Highland, Rialto, and San Bernardino have filed oppositions.<sup>2</sup>

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 76.905 of the Commission’s rules.<sup>4</sup>

<sup>1</sup>See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(2). The Communities are Beaumont, Calimesa, Colton, Highland (CUID Nos. CA0176 and CA1296), Redlands, Rialto, Yucaipa, San Bernardino (CUID Nos. 0263 and CA0900), Grand Terrace, and Loma Linda. Rialto is certified to regulate basic cable service rates.

<sup>2</sup>The Cities of Calimesa, Yucaipa, and Highland filed a joint opposition (“Calimesa”). According to the opposition, Adelphia was operating under an Interim Franchise Agreement in the City of Calimesa that expired in February 2002. Therefore, Calimesa asserts Adelphia is not currently an authorized cable provider. An effective competition proceeding is not the proper forum for determining whether Adelphia is an authorized cable provider. If Calimesa believes that Adelphia is operating a cable system without a franchise, it can bring a complaint on that issue.

<sup>3</sup>47 C.F.R. § 76.906.

<sup>4</sup>47 C.F.R. § 76.905.

The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>5</sup> Based on the record in this proceeding, Adelphia has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>6</sup>

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>7</sup> Adelphia has provided evidence of the advertising of DBS service in the news media serving the Communities.<sup>8</sup> Rialto filed an opposition arguing that Adelphia has failed to provide evidence of DBS’ technical availability in Rialto and that there are no regulatory, technical or other impediments to households receiving DBS service in Rialto. Rialto, San Bernardino, and Calimesa argue that Adelphia’s advertising is regional and is not specifically targeted to the Communities, *i.e.*, Adelphia’s use of a printout from a website (store.yahoo.com) and advertisements from the Los Angeles Times. San Bernardino argues that the internet advertisement is not proper evidence of advertising because Adelphia has not demonstrated that the people of San Bernardino have computers or Internet access. San Bernardino objects to the newspaper advertisements because only one DISH network retailer in the advertisement is located in San Bernardino County. Furthermore, San Bernardino and Calimesa argue that the Los Angeles Times is not a general circulation newspaper in the Communities. San Bernardino and Calimesa argue that the Communities have their own general circulation newspapers and Adelphia has not submitted evidence of advertising in those papers. San Bernardino therefore argues that the ads for Best Buy and Circuit City from the Los Angeles Times should be disregarded. Calimesa also argues that the materials from Radio Shacks and Costcos do not indicate that they were from stores in San Bernardino. Finally, Calimesa argues that none of the Communities have a Best Buy, Circuit City, Radio Shack or Costco. Rialto, San Bernardino, and Calimesa therefore argue that all of Adelphia’s evidence is irrelevant because there is no specific reference to the Communities.

5. Notwithstanding the arguments of Rialto, San Bernardino, and Calimesa, we will accept the evidence of advertising of DBS service provided by Adelphia. We have previously stated that DBS is presumed to be technically available. We also have stated that potential DBS subscribers may be made reasonably aware of the availability of such service by advertising through regional or local media, direct mail, or any other marketing outlet.<sup>9</sup> The cities correctly assert that advertising, such as internet web sites, that require the consumer to actively seek out the advertisement is not the type of advertising upon which we rely generally for purposes of determining reasonable awareness.<sup>10</sup> The other evidence

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<sup>5</sup>See 47 C.F.R. §§ 76.906 and 907.

<sup>6</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>7</sup>See *MediaOne of Georgia*, 12 FCC Rcd 19406 (C.S.B. 1997).

<sup>8</sup>See Adelphia Petition at 3-6 and Exhibit C.

<sup>9</sup>*Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5656-5657 (1993).

<sup>10</sup> This is not to infer that the availability of such information via subscriber action does not add to the general

submitted by Adelphia – the newspaper advertisements and in store advertisements – are sufficient to establish that potential subscribers in the Communities are reasonably aware of the DBS providers. In this regard, we disagree that regional advertising in the Los Angeles Times is not sufficient to demonstrate awareness in the Communities. The Los Angeles Times is the largest circulation newspaper in the Los Angeles vicinity in which all of the Communities are located. Finally, Calimesa’s assertion that none of the Communities has a Best Buy, Circuit City, Radio Shack or Costco appears misinformed.<sup>11</sup> We remind the cities that the standard under our rules is advertising that makes potential subscribers reasonably aware, not ubiquitously aware. Based on the record in this proceeding, Adelphia has satisfied this standard.

6. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission’s program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>12</sup> We find that Adelphia has demonstrated that the communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the Communities. Adelphia also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>13</sup> Therefore, the first prong of the competing provider test is satisfied for the Communities served by Adelphia.

7. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Adelphia sought to determine the competing provider penetration of its franchise area by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Communities on a five-digit zip code basis.<sup>14</sup> Calimesa and Rialto object to the use of the SkyTrends’ information because it is undated, there is no foundation, authentication, and no explanation of how the report was compiled or computed. Calimesa also argues that the information is not audited and is therefore unreliable. San Bernardino and Calimesa also object to the use of the SkyTrends’ information because Adelphia has provided no basis for the report and the petition focuses on DirecTV and DISH, which ignores the possibility that the data could reflect that 100 percent of the subscribers in San Bernardino are using C-Band. San Bernardino and Calimesa further argue that DBS service in the area is referring to high-power service like DirecTV and DISH rather than low-power C-Band, and therefore should be disregarded for failing to satisfy the evidentiary burden. San Bernardino also argues that if Adelphia’s subscribership number of 478 was correct, it would not be the largest MVPD in the franchise area. Finally, San Bernardino argues that Adelphia is not the sole cable franchise in the franchise area.

8. The Commission has consistently accepted SkyTrends’ data as reliable for purposes of

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awareness of these providers’ service.

<sup>11</sup> Reference to the Internet web sites of these retailers indicate that there are Circuit City, Best Buy, Costco and four Radio Shack retail locations in San Bernadino. In addition, there are Radio Shack locations in Beaumont, Colton, Highland, Redlands (2 locations), Rialto, and Yucaipa.

<sup>12</sup>See 47 C.F.R. § 76.905(g). See also Adelphia Petition at 6-7 and Exhibits D, E, and F.

<sup>13</sup>See Adelphia Petition at 5-6.

<sup>14</sup>*Id.* at 8-9.

effective competition determinations.<sup>15</sup> The SkyTrends Report submitted by Adelphia is copyrighted 2002. Given that Adelphia's petition was filed in May of that year, we find the SkyTrends information to be sufficiently timely. Second, even if San Bernardino's unlikely hypothesis that 100 percent of the satellite subscribers in that city are C-Band subscribers was correct, that would not alter the validity of Adelphia's claim that there are 13,964 MVPD subscribers other than the largest MVPD in San Bernardino. The SkyTrends' report states that it reflects aggregate totals for DISH, DirecTV, and C-Band and reflects Census 2000 information. Finally, the fact that there is a competing cable operator in Adelphia's San Bernardino franchise area serves only to further support a finding that Adelphia is subject to effective competition in that franchise area. Adelphia also submitted a corrected subscribership number of 20,527 for San Bernardino, which makes it the largest MVPD.<sup>16</sup>

9. Adelphia asserts that it is the largest MVPD in all of the Communities because Adelphia's subscribership exceeds the aggregate DBS subscribership for those franchise areas.<sup>17</sup> Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data,<sup>18</sup> we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in each of the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we concluded that Adelphia has submitted sufficient evidence demonstrating that its cable systems serving the Communities set forth on Attachment A are subject to effective competition.

### III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Century-TCI California, L.P. and Adelphia Cablevision of San Bernardino, LLC d/b/a Adelphia Cable Communications **IS GRANTED**.

11. **IT IS FURTHER ORDERED** that the certification of Rialto, California to regulate basic cable service rates **IS REVOKED**.

12. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

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<sup>15</sup>See e.g., *TWI Cable Inc., d/b/a Time Warner Cable*, 17 FCC Rcd 19178, 19179 (M.B. 2002); *Cablevision of Paterson d/b/a Cablevision of Allamuchy*, 17 FCC Rcd 17239, 17242 (M.B. 2002); *Marcus Cable Associates, LLC d/b/a Charter Communications, Inc.*, 17 FCC Rcd 16652 (M.B. 2002) *pet. for recon. pending*.

<sup>16</sup>Adelphia Supplement at 2.

<sup>17</sup>Petition at 8-9.

<sup>18</sup>*Id.* and Exhibit B.

<sup>19</sup>47 C.F.R. § 0.283.

## Attachment A

## CSR-5888-E

Communities	CUIDS	CPR**	2000 Census Households <sup>+</sup>	Estimated DBS Subscribers <sup>+</sup>	Adelphia Subscribers <sup>+</sup>
Beaumont	CA0951	21.0	3,881	814	1,622
Calimesa	CA1296	19.7	2,982	586	981
Colton	CA0950	19.3	14,520	2,804	6,839
Highland*	CA1296	24.1	13,478	3,249	8,452
Redlands	CA0394	21.8	23,593	5,149	12,140
Rialto	CA0140	23.4	24,659	5,766	14,508
Yucaipa	CA0866	29.0	15,193	4,410	6,012
San Bernardino*	CA0900	24.8	56,330	13,964	20,527
Grand Terrace	CA1017	24.9	4,221	1,050	2,212
Loma Linda*	CA0823	16.3	7,536	1,227	3,195

\*Represents franchise areas with two CUIDS. The subscribership numbers reflect the combined figures for the two CUIDS in each of the communities.

\*\*CPR = Percent of competitive DBS penetration rate.

<sup>+</sup>See Petition at 9 and Exhibits B, H, and I.